

Date: 19991206

Docket: T-2010-99

MONTREAL, QUEBEC, THIS 6th DAY OF DECEMBER 1999

PRESENT: RICHARD MORNEAU, ESQ., PROTHONOTARY

BETWEEN: ST. LAWRENCE CEMENT INC.,

a body politic and corporate of Quebec, Canada

Plaintiff

AND

THE OWNERS AND ALL OTHERS INTERESTED IN

The Ship "ALCOR"

-and-

NEW WIND SHIPPING CO. LTD.

a body politic and corporate of Malta

Defendants

Motion on behalf of Plaintiff for an urgent Order permitting Plaintiff and its representatives to:

- a) draw and remove samples of the M.V. "ALCOR"s steering system oil;
- b) obtain the vessel"s system oil grade, system oil technical data and system oil analysis results for the last 12 months;
- c) attend any opening for inspection of the M.V. "ALCOR"s" steering gear;
- d) take hull and internal thickness measurements of the M.V. "ALCOR"s hull by way of ultrasonic testing;
- e) examine the following original M.V. "ALCOR" documents (and take copies of):
 1. Master"s Report of Casualty + all deck and engine officers certificate and STCW

endorsements.

2. Chief Engineer"s Statement
3. Deck Log covering the period from arrival load port to time crew taken off
4. Engine Room Log Entries
5. Chart in use
6. Deck Bell Book from Escoumins Pilot to incident
7. Engine Room Bell Book from Escoumins Pilot to incident
8. Course Recorder for 8 hours before the incident and 1 hour after incident
9. Pilot Card
10. Crew List
11. Ship Certificates:
 - Load Ligne
 - Safety Construction
 - Safety Equipment
 - Class
 - Document of Compliance
 - ISM
 - Safety Radio
12. Hull Enhanced survey Programme (ESP) manual
13. Stability Book bulk cargoes + Appendix above for approved Loading/Unloading conditions
14. All Thickness Measurements taken at last drydock (Special Survey 1997) and thereafter
15. General Arrangement + Midships Section + Shell Expansion
16. Capacity Plan
17. Megger Test report
18. Vessels damage control plan - grounding
19. Classification Society"s Survey Listing (including Outstanding Recommendations)
20. Class Survey Report re: last drydock (S.S.)
21. Steering Gear Manufacturer"s Manual
22. Steering Gear Vessel Maintenance"s Manual
23. Steering Gear grade of oil
24. Master"s night order Book from 1/10 to leave ship
25. Chief Engineer order Book from 1/10 to leave ship

26. Bridge Standing orders
27. Engine Room Standing orders
28. Port Log entries for the last discharge and load

(Which documents may still be aboard the vessel), the whole with a view to allowing Plaintiff an opportunity to preserve such evidence pending the outcome of any arbitration between the parties herein.

The Plaintiff seeks to be relieved of its default to comply with Rule 362(1).

The Plaintiff also seeks the approval of the Court in serving this urgent motion on the Defendants' *de facto* attorneys (although not attorneys of record), Messrs. Langlois, Gaudreau, O'Connor, the whole with costs if this motion is contested.

[Rules 324 and 377 of the *Federal Court Rules, 1998* and

Article 9 of the *Commercial Arbitration Code, Commercial Arbitration Act*]

MOTIFS DE L'ORDONNANCE ET ORDONNANCE

[1] Cette requête de la demanderesse en vertu de la règle 377 des *Règles de la Cour fédérale (1998)* et entendue de façon urgente est rejetée avec dépens. Je considère en effet que la demanderesse n'a pas soumis de preuve véritable propre à rencontrer le test jurisprudentiel applicable sous cette règle et ce, tant à l'égard de la preuve matérielle, c'est-à-dire l'huile de la boîte de direction (steering gear), que de la preuve documentaire. La preuve de perte potentielle n'a pas été établie.

Richard Morneau

protonotaire

FEDERAL COURT OF CANADA

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT NO.:

STYLE OF CAUSE:

T-2010-99

ST. LAWRENCE CEMENT INC.,

a body politic and corporate of Quebec, Canada

Plaintiff

AND

THE OWNERS AND ALL OTHERS INTERESTED IN The Ship "ALCOR" and NEW WIND SHIPPING CO. LTD., a body politic and corporate of Malta

Defendants

PLACE OF HEARING:Montreal, Quebec

DATE OF HEARING:December 6, 1999

REASONS FOR ORDER BY RICHARD MORNEAU, ESQ., PROTHONOTARY

DATE OF REASONS FOR ORDER:December 6, 1999

APPEARANCES:

Ms. Mireille Tabib for the Plaintiff

Mr. John G. O'Connor for the Defendants

SOLICITORS OF RECORD:

Stikeman, Elliott

Ms. Mireille Tabib for the Plaintiff

Montreal, Quebec

Langlois Gaudreau O'Connor

Mr. John G. O'Connor for the Defendants

Quebec, Quebec